

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.11.101,)	ON PROPOSED AMENDMENT AND
24.11.204, 24.11.206,)	ADOPTION
24.11.315, 24.11.316,)	
24.11.440, 24.11.441,)	
24.11.443, 24.11.445,)	
24.11.450A, 24.11.451,)	
24.11.454A, 24.11.461,)	
and the proposed)	
adoption of NEW RULE I,)	
all related to)	
unemployment insurance laws)	

TO: All Concerned Persons

1. On March 3, 2006, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the first floor conference room, Room 104, Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 27, 2006, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Program Support Bureau, Attn: Don Gilbert, Management Analyst, Helena, Montana 59604-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-0532; or email: dgilbert@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Unemployment Insurance Division of the Department recently established a computerized system by which it can process unemployment insurance claims via the internet. This system is called "UI4U." Minor changes are necessary to incorporate this new capability into the rules. This statement of reasonable necessity applies to all the proposed rule amendments. Where there are specific bases for a proposed action, those additional reasons immediately follow the applicable rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.11.101 DIVISION ORGANIZATION--LOCATION (1) and (2) remain the same.

(3) The address and contact numbers for the Department's main office in Helena are as follows:

Unemployment Insurance Division
Montana Department of Labor and Industry
1327 Lockey Street
P.O. Box 8020
Helena, MT 59604-8020
Telephone: (406) 444-3555
Fax: (406) 444-1394
TTY/TTD: (406) 444-0532

e-mail: montanai@mt.gov <http://uid.dli.mt.gov/uid/contact.asp>

(4) Contact numbers for unemployment insurance bureaus are as follows:

(a) Helena Claims Processing Center: (406) 444-2545;

(b) Billings Claims Processing Center: (406) 247-1000;

(c) Contributions Bureau Switchboard: (406) 444-3834; and

(d) Benefits Bureau Switchboard: (406) 444-3783.

(5) The Unemployment Insurance Internet Application (UI4U) is at:

<http://ui4u.mt.gov>.

AUTH: 2-4-201, 39-51-302, MCA

IMP: 2-4-201, 39-51-301, MCA

REASON: There is reasonable necessity to update the internet addresses and current telephone numbers of the Unemployment Insurance Division to aid employers and workers in contacting the appropriate Bureau within the Division. With the return of the unemployment insurance tax function to the Department of Labor and Industry, and the increasing use of e-mail correspondence, the Unemployment Insurance Division created specific e-mail addresses to aid customers in reaching the appropriate Department staff. The new e-mail address above leads to a listing of specific addresses for tax contribution versus benefit claims. The address of the internet claims application (UI4U) is also provided to assist those customers wishing to use that application.

24.11.204 DEFINITIONS (1) through (3) remain the same.

(4)(9) "Appropriate telephone center" means the unemployment insurance telephone center that serves the geographical area in which a claimant resides. "Claims processing center" means the center that provides unemployment insurance claims services to the public.

(5) through (9) remain the same, but are renumbered (4) through (8).

(10) through (36) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2111 Title 39, chapter 51, parts 2, 21 through 24, MCA, 39-51-3206,
MCA

REASON: Previous to the UI4U internet option, claims were taken by telephone. In order to appropriately include the UI4U option, telephone centers have been

renamed as claims processing centers. Further, due to technological improvements, the claims centers have become one “virtual” center linked by telecommunication and broadband communication improvements.

There is reasonable necessity to supplement and update the IMP citations to correct citations that were erroneously deleted in a prior rulemaking project.

24.11.206 TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS (1) remains the same.

(2) Except as provided for the filing of biweekly claims under ARM 24.11.443, if a filing or submission is required or allowed to be done by telephone, the person wishing to make the filing or submission must contact a customer service representative no later than the last day allowed to make the filing or submission, by calling the ~~appropriate telephone center~~ claims processing center during the ~~telephone center's~~ published business hours, and provide such information as the customer service representative may require to establish the identity of the person and the nature of the filing or submission the person intends to make. If a filing or submission is required or allowed to be done in writing, the writing must be delivered to the department either by mail or by facsimile and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make. Filings or submissions by mail must be postmarked no later than the last day allowed to make the filing or submission. Filings or submissions by facsimile must be received no later than the last day allowed to make the filing or submission. If the filing or submission is required or allowed to be done by electronic mail, the electronic mail message must be transmitted no later than the last day allowed to make the filing or submission and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make.

(3) through (5) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: There is reasonable necessity to update terminology due to renaming the telephone centers.

24.11.315 APPEAL OF DEPARTMENT DETERMINATIONS (1) remains the same.

(2) The notice of appeal should contain reasons for the appeal. ~~Appeal forms, known as UI-214, may be used and are available at local offices.~~

(3) The notice of a benefits appeal, other than that referenced in ARM 24.11.315(1)(a), must be filed ~~at a local office or~~ at the department's office in Helena either in person, ~~or by mail, by facsimile, or by e-mail.~~ Benefit appeal forms may be used and are available upon request.

(4) The notice of a tax appeal, other than that referenced in ARM 24.11.315(1)(a), must be filed in writing with the department's office in Helena, either in person, by mail, by facsimile, or by e-mail.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: It is necessary to revise this rule to accurately reflect the current departmental procedures concerning the filing of an appeal of an unemployment insurance determination. Regarding benefits appeals, the Department will accept appeals submitted on a Department form (the UI-214 form) or by any of the methods listed in (3). Local Workforce Service Center (Job Service) offices are no longer involved in unemployment insurance claims processing, so references to these offices are removed from the rule.

Because the Department has resumed handling unemployment insurance tax contributions, the Department proposes to add (4) to set out a procedure for appeals of tax contribution determinations. Further, the explanation regarding benefit appeal forms is moved to (3) since (2) now applies to tax contribution appeals as well.

It is necessary to update the proper implementation citations to this rule while otherwise amending the rule.

24.11.316 TRANSFER OF FILES TO HEARINGS BUREAU (1) After receiving a notice to appeal a department determination or redetermination on benefits, ~~the benefits bureau~~ department staff sends the administrative file to the hearings bureau of the department.

(2) and (3) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: There is reasonable necessity to amend the rule to clarify that several work units within the Unemployment Insurance Division may send appeals of benefit-related issues to the Hearings Bureau. The current language incorrectly implies that only the Benefits Bureau submits such appeals.

24.11.440 DEFINITIONS The following definitions apply to this subchapter, unless context clearly indicates otherwise:

(1) and (2) remain the same.

(3) "Valid claim" means a claim filed by a claimant who:

(a) has earned the qualifying amount of wages ~~and worked the required number of weeks~~ as required by 39-51-2105, MCA;

(b) and (c) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: ~~39-51-2101 through 39-51-2604~~ Title 39, chapter 51, parts 21 through 26,
MCA

REASON: The Department proposes to remove the interlined language because the Department no longer uses "weeks of work" in a determination of an individual's entitlement to UI benefits. In addition, there is reasonable necessity to update the IMP citation to more accurately reflect the implemented statutes.

24.11.441 CLAIMS FOR BENEFITS (1) To request a determination of a claimant's eligibility for benefits, the claimant must file an initial claim by accessing the department's internet claims application or calling the appropriate telephone claims processing center and providing such information ~~to a customer service representative~~ as the department may require for the proper administration of the claim. The information required from the claimant includes, but is not limited to:

(a) through (6) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 39-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 39-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

REASON: Changes reflect the implementation of another means to file for unemployment insurance benefits by using the Department's internet-based claims filing system (UI4U). Other changes are due to renaming the telephone centers to claims processing centers that can provide service to individuals transacting business by telephone, internet, fax or mail regardless of the individual's residence.

24.11.443 BIWEEKLY CLAIMS (1) After filing an initial claim and establishing a valid claim for benefits, a claimant wishing to claim benefits or waiting period credit for any week that begins within the claimant's benefit year must file a timely biweekly claim for the week. The biweekly claim must be filed using either the department's interactive voice response telephone system or the internet claims application, unless it is determined by the department that the claimant is unable to use ~~the system~~ either filing method. In those instances, the claimant will be allowed to file biweekly claims by mail using biweekly claim forms provided by the department.

(2) remains the same.

(3) When filing a biweekly claim using the interactive voice response telephone system, a claimant must enter the claimant's social security number and personal identification number to access the system and must answer each question asked by the system. When filing a biweekly claim using the internet claims application, a claimant must enter the claimant's social security number, birth date, and personal identification number to access the application and must answer each question listed on the biweekly claims form. The claimant's personal identification

number, which is established by the claimant and unknown to the department and which the claimant is required to keep confidential, is considered to be the equivalent of the claimant's signature certifying that the claimant's responses to the questions ~~asked by the system~~ are true and accurate to the best of the claimant's knowledge. When filing a biweekly claim by mail, a claimant must answer each question on the biweekly claim form and sign the form to certify that the claimant's responses to the questions are true and accurate to the best of the claimant's knowledge.

(4) and (5) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

REASON: Changes reflect the implementation of the UI4U internet system as another method to file continued claims in addition to initial claims. The proposed changes also establish the required elements needed to use the UI4U filing method.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

(1) remains the same.

(2) To reactivate an inactive claim, the claimant must call the ~~appropriate telephone~~ claims processing center during the ~~telephone center's~~ published business hours and request that the claim be reactivated. A reactivated claim is effective on the first day of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. If the department finds that the claimant had good cause for the delay in reactivating the claim, the claim will be backdated.

(3) When ~~calling to reactivate~~ reactivating a claim, a claimant must provide information concerning any separation from insured work as provided in ARM 24.11.451.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2103, 39-51-2104, 39-51-2201, MCA

REASON: These changes are due to renaming the telephone centers and language clarification.

24.11.450A NON-MONETARY DETERMINATIONS AND REDETERMINATIONS--NOTICE (1) through (3) remain the same.

(4) When the department obtains credible information that raises a non-monetary issue relative to a claim, but there is insufficient evidence upon which to base a determination or if the claimant has not had an opportunity to respond to the information, the department notifies the claimant of the existence of the issue and of the fact that payment of benefits otherwise due will be suspended pending an initial determination relative to the issue. The claimant has ~~40~~ eight days in which to provide information concerning the issue. If the claimant does not provide the requested information within the time allowed, the claimant is determined to be unavailable for work for failure to provide requested information, as provided in ARM

24.11.452(1)(b). The ineligibility is effective on the Sunday of the week during which the act or circumstance that forms the basis of the issue occurred or came into existence.

(a) If, within ~~40~~ eight days of the date of the initial determination, the claimant provides information and the department determines from that information the claimant should not have been made ineligible for benefits, the ineligibility is removed. If the claimant provides that information after the ~~40~~ eight days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the ~~40~~ eight days, that ineligibility is removed.

(b) If, within ~~40~~ eight days of the date of the initial determination, the claimant provides information and the department determines from that information that the ineligibility can be ended as of a particular date, the ineligibility is ended as of the Saturday of the week in which that date occurred. If the claimant provides that information after the ~~40~~ eight days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the ~~40~~ eight days, that ineligibility is ended as of the particular date.

(5) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301 through 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: There is reasonable necessity to shorten the time for responding with information in order to meet performance standards established by the U.S. Department of Labor. The U.S. Department of Labor allows 21 days from the filing date of a claim for a state unemployment insurance agency to obtain statements and rebuttals from the claimant and the last employer(s) before any resultant decision is considered "untimely." If a state has 21% or more of its claims classified as "untimely," the state must draft and implement corrective action plans, which Montana has done during the past years.

Current rules permit a 10 day response period for the employer and the claimant, which leaves only one day for the agency to receive and act upon the information before the claim is "untimely." The proposed changes are an attempt to

reduce the response periods by a small amount, 10 days to 8 days, thus providing 5 days for the Department to receive and issue a "timely" decision. Given the speedier methods of communicating by fax, email, and telephone versus mailed letters, the Department does not believe this change will adversely impact employers or claimants.

24.11.451 SIX-WEEK RULE (1) and (2) remain the same.

(3) Each employer involved in a claimant's separation is allowed ~~40 calendar~~ eight days to respond to the claimant's statement of the reasons for the separation. If the information obtained from any employer is substantially different from that provided by the claimant, the claimant is allowed ~~40 calendar~~ eight days to respond to the employer's statement. The ~~40 calendar~~ eight days allowed for the employer's or the claimant's response begins on the day following the date the information is mailed, faxed, or communicated by telephone to the employer or to the claimant. In the interest of making timely determinations and redeterminations, department personnel may attempt to provide the parties' statements to each other by telephone and obtain their responses at that time or request that they respond at sometime sooner than the expiration of the ~~40~~ eight days allowed for them to respond. Either party may waive the ~~40~~ eight days by providing their response prior to the expiration of the ~~40~~ eight days.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2301 through 39-51-2304, MCA

REASON: The proposed changes to this rule are for the same reasons as explained in 24.11.450A.

24.11.454A LEAVING OR DISCHARGE FROM WORK--SUSPENSIONS

(1) remains the same.

(2) The department applies the following rules to determine the applicable date of separation from employment:

(a) When an employer gives a valid notice of termination to a worker and the worker leaves work prior to the intended date of termination, the worker is considered to have been discharged as of the intended date of discharge. If the period of time between the worker's leaving and the intended date of discharge is four weeks or less, the worker is considered to be unavailable for work during that time as provided in ~~ARM 24.11.452(3)(c)~~, ARM 24.11.452A provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. If the period of time between the worker's leaving and the intended date of discharge is more than four weeks, the worker is considered to have left work as of the date of leaving, provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. To be considered a valid notice of termination, the notice must be formal, unconditional, specific as to the individual worker and as to the intended date of termination, and be communicated to the individual worker by the employer or by an agent of the employer authorized to give such notices. If the notice is not valid, the worker will

not be considered to have been terminated, but only to have left work without good cause attributable to the employment, provided that the leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment.

(b) and (3) remain the same.

(4) A worker is considered to have constructively left work when the worker committed an act or omission that made it impracticable for the employer to utilize the worker's services and, for that reason, resulted in the worker's discharge, provided that the worker knew or should have known that the act or omission could jeopardize the worker's job and possibly result in discharge.

(a) As an example, a worker has constructively quit if the worker accepts employment on specified conditions and the worker fails to meet those conditions through the worker's own fault. Such conditions may include, but are not limited to, failure to report for work due to incarceration, failing to meet license or permit requirements for employment, or failing to maintain insurability. These examples are not meant to be exclusive reasons for a constructive quit.

(5) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2101, 39-51-2104, 39-51-2304 MCA

REASON: The change in (2) is needed to correct a reference to a rule that was repealed and replaced with a newer rule 24.11.452A. The change in (4) is intended to clarify when a constructive quit has occurred. During the past years, both workers and employers have expressed some concern about the lack of examples, and the new wording addresses that concern.

24.11.461 SPECIFIC ACTS OF MISCONDUCT

(1) The following acts are considered misconduct because the acts signify a willful and wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include:

(a) and (b) remain the same.

(c) dishonesty related to employment, including but not limited to deliberate falsification ~~or~~ of company records, theft, deliberate deception or lying;

(d) false statements made as part of a job application process, including, but not limited to deliberate falsification of the individual's work record, educational or licensure achievements;

(d) through (g) remain the same, but are renumbered (e) through (h).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2303, MCA

REASON: It is necessary to correct a typographical error in (1)(c). Subsection (1)(d) is proposed to address situations in which a worker received benefits following a termination due to the employer determining that the worker submitted falsified information during the job application process and the worker was advised

of the consequences of submitting false information during the application process. The duty of honesty is a necessary element in any employment relationship.

5. The proposed new rule provides as follows:

NEW RULE I WORK REGISTRATION AND EXCEPTIONS (1) In accordance with 39-51-2102 and 39-51-2104, MCA, all claimants must register for work with the Workforce Services office serving the area in which the claimant resides, unless excused by the department. All claimants who are required to register must also maintain their work registration in an active status (as defined by the Workforce Services Division) as one of the eligibility conditions to receive benefits.

(2) A claimant who is excused from registering is not required to actively seek work, but must meet all other eligibility requirements in order to receive benefits. Work registration exceptions are limited to the following common circumstances:

(a) Job attached claimants, as defined in ARM 24.11.452A, must maintain contact with the employer to whom they are attached, and must return to work when requested by the employer.

(b) Union attached claimants, as defined in ARM 24.11.452A, must comply with the union's requirements to be considered a member in good standing and be listed on the union's out-of-work list.

(c) Labor dispute claimants who are unemployed due to a labor dispute may be excused from registering until a determination under ARM 24.11.465A is issued. If benefits are allowed, the claimant must either register for work or must provide sufficient information to the department to qualify for an exception as job attached or union attached within the time period specified in ARM 24.11.452A.

(d) Individuals participating in approved federal training programs under 39-51-2602, MCA.

(3) Registration exceptions may be granted to other individuals or groups if the department finds the exception to be consistent with the purpose of the unemployment insurance program. Registration exceptions cannot be granted if prohibited by state or federal laws governing certain unemployment insurance programs.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2104, MCA

REASON: This rule is necessary because enactment of Chap. 466, L. of 2005 (House Bill 159) requires the Department to establish a rule specifying situations or circumstances in which the Department may excuse an individual or groups of individuals from registering for work with the Workforce Services Division. The rule collects currently followed exemptions found in other places in the UI rules.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Don Gilbert, Management Analyst
Program Support Bureau
Unemployment Insurance Division
Department of Labor and Industry
PO Box 8020
Helena, Montana 59604-8020

and must be received by no later than 5:00 p.m., March 10, 2006. Comments may also be submitted electronically as noted in the following paragraph.

7. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., March 10, 2006. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

8. The Department maintains lists of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written requests may be delivered to Mark Cadwallader, 1327 Lockett St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the Department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

10. The Hearings Bureau, Centralized Services Division of the Department of Labor and Industry has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER

Mark Cadwallader,
Alternative Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND
INDUSTRY

Certified to the Secretary of State January 30, 2006